

1 Steven M. Goldberg (SBN 82174)
Tadeusz McMahon (SBN 304699)
2 **MARKUN ZUSMAN & COMPTON LLP**
3 Hutton Centre Dr., Ninth Floor
4 Santa Ana, CA 92707
Telephone: (949) 390-2170
5 Fax: (310) 454-5970
Email: sgoldberg@mzclaw.com
tmcmahon@mzclaw.com

6 *Attorneys for Plaintiff GORDON KLEIN*

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES – SANTA MONICA COURTHOUSE**

10
11 GORDON KLEIN,

12 *Plaintiff,*

13 v.

14 ANTONIO BERNARDO; THE REGENTS
15 OF THE UNIVERSITY OF CALIFORNIA;
and DOES 1 through 25,

16 *Defendants.*

Case No. 21SMCV01577
Assigned to the Hon. H. Jay Ford, III

**DECLARATION OF PLAINTIFF
GORDON KLEIN IN OPPOSITION
TO DEFENDANTS’ SPECIAL
MOTION TO STRIKE**

Date: March 15, 2022
Time: 8:30 a.m.
Dept.: O

Complaint Filed: 9/27/2021
Trial Date: None

1 **DECLARATION OF GORDON KLEIN**

2 I, GORDON KLEIN, declare:

3 1. I am the plaintiff in this action. I respectfully submit this declaration in opposition to
4 the special motion to strike my First Amended Complaint filed by defendants Antonio Bernardo
5 (“Bernardo”) and the Regents of the University of California (collectively, “Defendants”). I have
6 personal knowledge of the facts set forth herein and, if called to testify, I could and would
7 competently testify to them.

8 2. I am a Continuing Lecturer at the UCLA Anderson School of Management. I have
9 held a full-time appointment to teach business law, tax law, and financial analysis at the Anderson
10 School for about 40 years.

11 3. Prior to Bernardo placing me on leave and reassigning my classes in the midst of the
12 Spring 2020 academic quarter as discussed below (“Confidential Personnel Action”), I had no
13 record of discipline during my four decades of employment by UCLA and never had been accused
14 of any form of discrimination or harassment.

15 4. In or about 1988, UCLA granted me enhanced security of employment as a
16 Continuing Lecturer following an Excellence Review that concluded I “demonstrated excellence in
17 the field and in teaching, academic responsibility, and other assigned duties.”

18 5. I have regularly received merit-based pay raises throughout my years of employment
19 by UCLA. For example, in the most recent merit review conducted by UCLA prior to the
20 employment matter at issue here, the Anderson School approved a merit pay raise for me, noting
21 that my student evaluations were “effusive” in their praise and “well above the school average.”
22 A true copy of the memorandum dated May 28, 2018, memorializing that merit pay raise, is attached
23 hereto as **Exhibit 1**.

24 6. In response to the COVID-19 pandemic, UCLA implemented an online-only structure
25 for all lectures and exams during the Spring 2020 academic quarter.

26 7. On or about March 16, 2020, the UCLA Academic Senate issued a “Message to
27 Faculty” emphasizing that, despite the pandemic, faculty must continue to adhere to longstanding
28 UCLA grading policies. A true copy of the UCLA Academic Senate’s “Message to Faculty” dated

1 March 16, 2020, is attached hereto as **Exhibit 2**.

2 8. The Faculty Code of Conduct, referenced by the March 16, 2020, “Message to
3 Faculty,” requires instructors to apply course standards equally and evaluate students solely based
4 on merit. A true copy of UCLA’s Faculty Code of Conduct is attached hereto as **Exhibit 3**, with
5 the relevant portion highlighted at Part II, Subdivision A.

6 9. I am a member of a union bargaining unit. According to the Memorandum of
7 Understanding between the university and my bargaining unit (“MOU”), I am required to “carefully
8 insure equal application of class standards and requirements” and “advise students on academic
9 matters.” A true copy of Article 3 of the MOU that was in effect as of June 2020 is attached hereto
10 as **Exhibit 4**. Furthermore, according to UCLA’s “Confronting Bias” policy, faculty are encouraged
11 to vigilantly confront “everyday bigotry,” including by “framing confrontation in the form of a
12 question.” (See <https://equity.ucla.edu/know/confronting-bias/#:~:text=Despite%20increased%20diversity%20efforts%2C%20stigmatized,thereby%20promoting%20an%20inclusive%20climate.>)
13

14 10. Following the murder of George Floyd at the hands of Minneapolis police officers on
15 May 25, 2020, activists launched an email campaign demanding that UCLA instructors grant race-
16 based preferences in examination and grading.

17 11. On or about June 1, 2020, in apparent response to this coordinated campaign, my
18 immediate supervisor at the Anderson School, Professor Judson Caskey (“Caskey”), circulated
19 guidance “strongly encouraging” instructors “to follow the normal procedures” if “students ask for
20 accommodations such as assignment delays or exam cancellations.” A true copy of Caskey’s
21 guidance dated June 1, 2020, is attached hereto as **Exhibit 5**.

22 12. On June 2, 2020, I received an email from one of my students (“Student”) requesting
23 that I implement a “no-harm” grading structure for my final exam as a display of “compassion
24 and leniency with Black students.” The Student had taken a course of mine in the previous
25 academic quarter during which we developed a cordial relationship that included lively and robust
26 in-person discussions after class. I understood the Student’s email to have been a request for
27 unlawful racial preferences, and I responded with rhetorical questions aimed at educating the
28 Student as to the impropriety of racial preferences. A true copy of my email exchange with the

1 Student (“Email Exchange”) is attached hereto as **Exhibit 6**.

2 13. My private response to the Student – but not the entire Email Exchange – was
3 uploaded to social media and went “viral,” triggering the events at issue in this case. Although much
4 was made of my response by activists and others, after earning a grade of “A” in the Spring 2020
5 class at issue, the Student enrolled in yet a third class of mine a few months later.

6 14. After the uproar over my response to the Student made its way to Bernardo and other
7 Anderson School administrators, Bernardo and other representatives of Defendants issued public
8 statements asserting that my didactic message of equal treatment for all to the Student was
9 “outrageous,” “inexcusable,” “hurtful,” “disturbing,” and “offensive.” True copies of Bernardo’s
10 responses (on which I was copied) to several emails dated June 3, 2020, containing what appears
11 to be a copy-and-paste form complaint regarding the Email Exchange, are attached hereto
12 collectively as **Exhibit 7**. The attached exhibit includes only some examples of statements issued
13 by Defendants in response to the Email Exchange and is not exhaustive.

14 15. On June 3, 2020, the day after the Email Exchange, an Anderson School
15 representative informed UCLA’s central Academic Personnel Office that the Anderson School
16 wished to impose disciplinary measures on me, including actions that would “impact [my]
17 reappointment following this current academic year.” UCLA’s Academic Personnel Office
18 promptly responded: “The School cannot take any action against [my] appointment, including
19 any discipline or non-appointment at this time. Further inquiry is warranted before action can be
20 taken.” A true copy of the email exchange between Susan Murray, UCLA Anderson School’s
21 Interim Director of Academic Affairs, and the central UCLA Academic Personnel Department’s
22 Labor Relations Specialist dated June 3, 2020, is attached hereto as **Exhibit 8**. I obtained
23 this email exchange on August 2, 2021 in response to a request I submitted to UCLA for my
24 personnel file.

25 16. Despite receiving this instruction from UCLA’s Academic Personnel Office, the
26 Anderson School proceeded that same day to suspend me from teaching my ongoing Spring 2020
27 classes, banned me from entering the Anderson School, appointed a UCLA administrator to monitor
28 and censor my outbound emails, and terminated me from teaching upcoming Summer Session

1 classes for which I previously had accepted and signed an appointment contract. The latter act of
2 employment termination was communicated to me by the Anderson School canceling my access to
3 the online class websites and replacing my name as the instructor of record with the names of other
4 instructors. One of those replacement instructors, Julie Ann Gardner Treloar, also confirmed to me
5 at that time that she had been hired to replace me. A true copy of the “Notice of Administrative
6 Leave” that I received by email from Bernardo on June 3, 2020, is attached hereto as **Exhibit 9**.
7 A true copy of the written appointment agreement for my 2020 Summer Session classes is attached
8 hereto as **Exhibit 10**.

9 17. On June 21, 2020 (Father’s Day) – without any advance notice – Bernardo suddenly
10 ordered me to resume teaching classes the following day. A true copy of the correspondence I
11 received from Bernardo on June 21, 2020, is attached hereto as **Exhibit 11**.

12 18. Despite informing me on June 21, 2020 that I was unconditionally reinstated, that
13 same day Bernardo published an email to the Anderson Community stating (in pertinent part) that,
14 although “certain measures can only be implemented on a short term basis,” the “administrative
15 process continues” concerning me. A true copy of Bernardo’s June 21, 2020 email to the Anderson
16 Community is attached hereto as **Exhibit 12**.

17 19. Having been fully reinstated about one hour before Bernardo issued that email to the
18 Anderson Community, and having subsequently reviewed various administrator communications in
19 my personnel file provided by UCLA, I am unaware of any evidence that supports Bernardo’s
20 published statement to the Anderson Community on June 21, 2020 that the “administrative process
21 continue[d]” against me. Accordingly, to my knowledge, Bernardo’s suggestion that the
22 “administrative process continues” in his June 21 email was false.

23 20. Bernardo’s June 21, 2020 email subsequently was criticized both by the UCLA
24 Academic Senate Committee on Academic Freedom and the UCLA Academic Senate Committee
25 on Privilege and Tenure. A true copy of the UCLA Academic Senate Committee on Academic
26 Freedom’s statement dated June 30, 2020, is attached hereto as **Exhibit 13**, and a true copy of the
27 UCLA Academic Senate Committee on Privilege and Tenure’s statement dated March 8, 2021, is
28 attached hereto as **Exhibit 14**.

1 21. The UCLA Discrimination Prevention Office (“DPO”) confirmed that it would
2 “not pursue a formal investigation” of me and “close[d] this matter.” True copies of the
3 correspondence I received from DPO dated July 22, 2020, and DPO’s Investigation Report dated
4 September 14, 2021, are attached hereto as **Exhibit 15**.

5 22. Since approximately 2008, I have maintained a profitable expert witness consulting
6 practice (“Expert Witness Practice”), of which Defendants were aware prior to these events.
7 This business endeavor is reflected in my online UCLA Anderson School faculty biography,
8 available at <https://www.anderson.ucla.edu/faculty-and-research/accounting/faculty/klein>. A true
9 copy of my Anderson School online biography is attached hereto as **Exhibit 16**. It also is reflected
10 in my curriculum vitae, which I periodically submit to Defendants and is contained in the personnel
11 file provided to me by UCLA.

12 23. The Expert Witness Practice has served as my principal source of income and is
13 independent of my teaching duties. Immediately after Bernardo’s public announcement of the
14 Confidential Personnel Action, I was dropped from pending matters by significant clients.
15 The Expert Witness Practice has largely dried up and may never recover. Defendants’ wrongful
16 conduct also has caused me to suffer severe emotional distress, trauma, and physical ailments for
17 which have been treated by my primary care physician, a gastrointestinal physician, and a
18 psychiatrist.

19 24. I was eligible for a regular merit pay increase for the current Academic Year ending
20 June 2022. I consistently have been granted merit pay increases over my four decades at UCLA.
21 Despite Defendants’ admission in my most recent merit pay review that “the majority of comments”
22 received in connection with their contemporaneous evaluation of my performance were “strongly
23 positive,” Defendants denied my current pay increase. A true copy of the memorandum dated
24 June 25, 2021, memorializing the Anderson School’s decision to deny my merit pay raise, is
25 attached hereto as **Exhibit 17**.

26 25. I have never been investigated by UCLA’s Title IX Office or DPO, nor have I
27 received notice of any discrimination or harassment investigation, which I understand would be
28 required under UCLA’s Title IX and DPO procedures. I have never engaged in any discriminatory

1 conduct, sexual harassment, or other inappropriate behavior throughout my 40-year career at
2 UCLA.

3 26. The MOU provides that personnel matters must be kept confidential. Specifically,
4 Article 10 of the MOU states: “Members of the public and non-governmental entities shall not
5 have access to confidential personnel files except as required by law,” and that “[a]ccess by
6 University representatives and employees to confidential and non-confidential material in
7 personnel files and personnel review records . . . shall be strictly limited to those representatives
8 and employees who need access to information in the personnel files [sic] in the performance of
9 their officially assigned duties.” A true copy of Article 10 of the MOU that was in effect as of
10 June 2020 is attached hereto as **Exhibit 18**.

11 27. Prior to filing this action, I filed a grievance concerning the events at issue herein
12 pursuant to the MOU. I subsequently requested to proceed to Step 3 of the MOU’s grievance
13 process. A true copy of my correspondence dated December 16, 2020, to the Executive Director
14 of UC Labor Relations, requesting to proceed to Step 3 of the MOU grievance process, is attached
15 hereto as **Exhibit 19**. UCLA did not respond to my appeal to proceed to Step 3 despite it being
16 obligated to do so. A true copy of Article 32 of the MOU that was in effect as of June 2020 is
17 attached hereto as **Exhibit 20**, which states: “The Labor Relations office in the Office of the
18 President shall issue the University's written decision to a Step 3 appeal within thirty (30) calendar
19 days of the receipt of the appeal.” Defendants also failed ever to communicate to me any specific
20 reason for the Confidential Personnel Action as was required by the MOU.


21 28. UCLA offers me course assignments each academic year through a written proposal,
22 which I accept by signing and returning to the Anderson School. A true copy of my written
23 appointment agreement in effect from July 1, 2019 to June 30, 2020, is attached hereto as
24 **Exhibit 21**.

25 29. A true copy of Article 2 of the MOU, which provides that NSF’s like myself are
26 entitled to Academic Freedom in accordance with UCLA’s Academic Freedom policy, is attached
27 hereto as **Exhibit 22**.

28 \\\

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
28

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 2nd day of March 2022, in Los Angeles County, California.



Gordon Klein